

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

PRENTICE E. WATSON

Claimant

VS.

KANSAS BUILDERS SUPPLY COMPANY, INC.

Respondent

AND

TRAVELERS INSURANCE COMPANY

Insurance Carrier

Docket No. 1,010,360

ORDER

Respondent appeals the October 20, 2003 preliminary hearing Order of Administrative Law Judge Steven J. Howard. Claimant was awarded benefits in the form of temporary total disability compensation and authorized medical treatment with Dr. Sammuelson for both his right ankle and right knee.

ISSUES

Respondent contends the Administrative Law Judge exceeded his jurisdiction in awarding medical treatment for the right knee, as the knee injury did not arise out of and in the course of claimant's employment. Additionally, respondent contends that claimant's alleged date of accident is inappropriate, as the records indicate the injury to claimant's ankle occurred nearly a week earlier.

Claimant contends he suffered injury to both his right knee and right ankle on March 25, 2003, while delivering a door to one of respondent's customers. Respondent argues that claimant's injury was limited to his ankle and that it occurred on March 19, 2003.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Based upon the evidence presented and for the purposes of preliminary hearing, the Appeals Board (Board) finds as follows:

Claimant began working for respondent in either January or February 2003 as a delivery truck driver. Claimant's duties involved delivering doors, manufactured by respondent, to respondent's customers. Claimant testified that on March 25, 2003, while delivering a door to a customer, he slipped while getting off the truck, injuring both his right ankle and his right knee. Claimant testified that a representative from the local business, where he was making the delivery, assisted him in unloading the door from the truck and was a witness to the injury.

Respondent contends that claimant's injury occurred on March 19, 2003, rather than March 25, 2003, with the injury being limited to the right ankle. Respondent provided the testimony of several respondent representatives and William Leroy Finley, who works for Commercial Painting (a customer of respondent), in support of its position. Mr. Finley testified that a door was delivered to his commercial painting business on March 19, 2003, and he did help an employee unload the door. He testified the door was solid oak and fairly heavy, which agrees with claimant's description of the door. He testified that claimant looked familiar, although he did not make a positive identification of claimant as being the one who made the delivery. He did testify that the person, who he assisted in unloading the door, slipped while unloading the door, but did not fall. Mr. Finley signed an invoice on March 19, indicating that a door had been delivered to his business.

Respondent also presented the testimony of Carolyn Randolph, respondent's production manager, who testified that claimant advised her on March 19, 2003, that he had twisted his ankle while delivering a door. There was no mention made of the knee. Claimant also told Ms. Randolph that he did not need medical treatment¹ and continued working on the 19th, completing his shift. Claimant worked for several more days, but did take off on March 24, 2003, for a doctor's appointment. Claimant did not work that day, advising respondent that he was going to the doctor because his ankle still hurt.² Claimant returned from the doctor following the appointment and continued working for several more weeks, without incident.

¹ P.H. Trans. at 37.

² Id. at 19.

Respondent's treasurer and controller, Rita Rice, testified that claimant's time card indicated he did not work on March 24, 2003, as he was off for a doctor's appointment.³ After the March 24 appointment, the time records indicated that claimant worked regularly through Friday, April 18, 2003. An accident report was prepared by Jeffrey Lynn Hembree, respondent's owner, but that accident was noted as being an incident without need for medical care. Therefore, the report was not filed with the Division of Workers Compensation or forwarded to the insurance company. During the three weeks after March 24, claimant did not request medical treatment.

Several of respondent's employees, including Larry Joe Randolph (a welder for responder), Delbert Travis Borden (a coworker of claimant), Jeff Lawson (from respondent's wood department), Bradley Kent Hembree (a salesman and, ultimately, general manager of respondent) and Jeffrey Lynn Hembree (respondent's owner), all testified to working with claimant during the several-week period after March 19, 2003. None of the respondent representatives recall claimant ever limping during this period of time or being limited in his ability to perform his job.

On April 21, 2003, claimant reported to Carolyn Randolph that he was having difficulties from the injury, involving both his ankle and his knee. This was the first indication to a respondent representative that claimant had knee complaints.

Claimant was then referred for medical treatment to orthopedic surgeon Prem Parmar, M.D., of the Orthopedic Professional Association in Kansas City, Kansas. Dr. Parmar examined both the ankle and the knee, with the first examination occurring on April 24, 2003. Dr. Parmar diagnosed an ankle sprain, which he felt claimant would gradually recover from, but believed a medial meniscus tear had occurred in the knee. An MRI was ordered and was performed on April 30, 2003. The MRI did not indicate an obvious tear, but Dr. Parmar indicated from claimant's examination that the MRI may have missed the tear. Claimant underwent conservative care, with the knee not improving. On July 22, 2003, Dr. Parmar performed a right knee arthroscopy with debridement of the chondromalacia of the medial femoral condyle and also performed a medial plica excision. Claimant recovered from the surgery and, by September 25, 2003, was recovering satisfactorily from the knee surgery. Dr. Parmar felt claimant was within a few weeks of being at maximum medical improvement with regard to the knee. However, claimant began experiencing additional ankle problems after the surgery. Dr. Parmar suggested that claimant consider consulting with a foot and ankle doctor. The ankle difficulties were the main focus at the time of the preliminary hearing, although there was continued dispute regarding the compensability of the knee injury. Respondent's representative Carolyn Randolph testified that April 21 was the first indication respondent had that claimant had any involvement to his knee from the March accident. It is also the first indication that

³ Rice Depo. at 7-8.

claimant was seeking medical treatment for that accident. As noted earlier, claimant went to the doctor on March 24, 2003. However, there are no medical reports in the record to show what claimant was treated for on that date or by whom.

In workers' compensation litigation, it is claimant's burden to prove his entitlement to benefits by a preponderance of the credible evidence.⁴ In this instance, the Board finds that claimant has failed to prove that he injured his knee on or about March 25, 2003. There is no indication that claimant delivered the doors in question on that date. There is, however, evidence that claimant delivered a heavy wooden door on March 19, 2003, to the business owned by Mr. Finley. There is also the testimony by Mr. Finley that he assisted claimant in unloading the truck and that while claimant did slip when removing the door from the truck, he did not fall. Mr. Finley testified he would have noticed if claimant had fallen. There are also several depositions from claimant's coworkers and supervisors indicating that claimant did not limp at any time between the alleged March knee injury and the April 21 notice to respondent that he was claiming a knee injury. Finally, claimant did not request medical treatment for the knee until April 21, 2003, the Monday after Easter weekend. At that time, he was referred to Dr. Parmar, whose initial office notes of April 24, 2003, indicate that claimant had only been noticing pain in his knee a few days before the examination. While claimant does provide a work-related injury history for both the ankle and the knee, the pain in the knee, according to the history given to Dr. Parmar, did not begin at the time of the accident, contrary to claimant's testimony at his deposition and at preliminary hearing.

The Board finds the evidence favors respondent's contention that claimant did not suffer an injury to his right knee on March 25, 2003. The statements made to witnesses, both contemporaneous with the alleged accident and shortly thereafter, indicate only ankle involvement. The Board, therefore, finds that claimant has failed to prove that he suffered accidental injury arising out of and in the course of his employment on March 25, 2003, to his knee. The Board notes, however, that claimant has received a substantial amount of medical treatment to the knee, all of which was authorized by respondent and all of which was provided prior to the preliminary hearing. As of the last visit to Dr. Parmar, claimant's knee was fast approaching maximum medical improvement, with the only additional medical treatment being requested for the ankle. As respondent has admitted the ankle injury from day one, the Board questions the need, not only for the preliminary hearing of October 14, 2003, but also for this appeal. Respondent's entitlement to any possible reimbursement or credit for monies paid for the knee treatment could easily have been handled at the time of regular hearing.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Order of Administrative Law Judge Steven J. Howard dated October 20, 2003, should be,

⁴ K.S.A. 44-501 and K.S.A. 2002 Supp. 44-508(g).

and is hereby, modified to grant claimant ongoing medical treatment with Dr. Sammuelson as the authorized medical treater, but only for the purpose of treating claimant's ankle injury and not the knee, and is affirmed with regard to the order of temporary total disability compensation.

IT IS SO ORDERED.

Dated this ____ day of February 2004.

BOARD MEMBER

c: C. Frank Allison, Jr., Attorney for Claimant
David F. Menghini, Attorney for Respondent
Steven J. Howard, Administrative Law Judge
Paula S. Greathouse, Workers Compensation Director